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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

USA,	§	
	§	
Plaintiff,	§	
VS.	§	CRIMINAL ACTION NO. L-01-772
	§	CIVIL ACTION NO. L-05-77
BELEM VASQUEZ-HERRERA,	§	
	§	
Defendant.	§	

MEMORANDUM

This Defendant has filed a \$2255 motion challenging his 2001 conviction for illegal re-entry under 8 U.S.C. §1326. Defendant was sentenced on December 31, 2001. His conviction was affirmed by the Fifth Circuit Court of Appeals in No. 02-40116 on December 12, 2002. The file contains a letter from the court of appeals, filed on May 12, 2003, advising that a petition for writ of certiorari had been denied. Accordingly, the conviction has been final for almost two years.

The sole ground of error in the instant motion is that the Defendant's offense level was "illegally enhanced" by "unconstitutional guidelines." Defendant says that he is relying on the decision in United States v. Booker, 125 S.Ct. 738 (2005), but virtually all the courts of appeals have held that Booker is not retroactive. It is possible that the Defendant is also attempting to attack the decision in

Almendarez-Torres v. United States, 523 U.S. 224 (1998), but that decision remains in effect and can only be changed by the United States Supreme Court.

This motion has no merit and must be DISMISSED.

DONE at Laredo, Texas, this 21st day of April, 2005.



George P. Kazen
United States District Judge